United States Court of Appeals

for the Second Circuit

APPELLANT'S BRIEF

75-2113

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

THE PEOPLE OF THE UNITED STATES, ex rel.

ALLEN M. ANDERSON,

Petitioner,

v.

J. LELAND CASSCLES, Superintendent of Great Meadow Correctional Facility,

Respondent.

MEMORANDUM

OF

LAW

75-2113

B
P/S

BRIEF FOR THE APPELLANT

ALLEN M. ANDERSON

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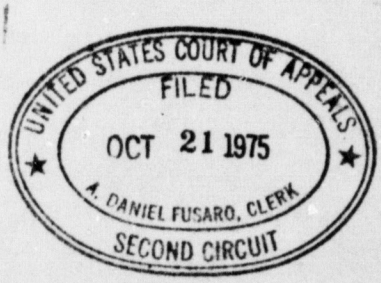

TABLE OF CONTENTS

TABLE OF CONTENTS con'd.

Table of Authorities

United States and New York State Statutes and Regulations

Statement of Issues

The basic issue presented is whether the petitioner has been denied due process and equal protection of the laws as guaranteed by the Fourteenth Amendment and the right to be tried by an impartial jury as guaranteed by the Sixth Amendment, by being tried by a jury chosen from a jury list on which blacks were known by the Commissioner of Jurors to be underrepresented, from which students were automatically excluded, and which was selected by a procedure at variances with the statutorily mandated procedures of New York State.

The further issue presented to this Court is whether or not petitioner has exhausted his State Court remedies on his third claim; namely, that the Albany County Jury Commissioner failed to abide by the provisions of Judiciary Law §§650-689 in selecting trial jurors thereby depriving petitioner of the equal protection of the law.

Statement of the Case

A Petition for a Writ of Habeas Corpus pursuant to 28 USC Section 2241, challenging Allen Anderson's conviction in Albany County Court on March 8, 1973 was filed on November 22, 1974 and was denied and dismissed without a hearing in a Memorandum-Decision and Order by Honorable Edmund Port rendered on March 17, 1975. (The Petition for a Writ of Habeas Corpus is contained in the original record. The Memorandum-Decision and Order denying the Writ of Habeas Corpus appears in the Appendix A 1 - 4.)

An application for a Certificate of Probable Cause was filed on April 16, 1974 with the United States District Court, Northern District of New York pursuant to 28 USC §2253. The Honorable Edmund Port granted the Certificate of Probable Cause on June 12, 1975. (The Certificate of Probable Cause granting leave to appeal to the United States Court of Appeals for the Second Circuit is in the record.)

The petitioner, a 31 year old black man and a college student at the time of his arrest on October 7, 1972, was found guilty by a petit jury of assaulting two white state troopers. On March 8, 1973 the petitioner was sentenced to an indeterminate sentence of imprisonment for a maximum of five years for his conviction for two counts of assault in the second degree.

The key issue at the trial was whether the petitioner or one of the state troopers struck the first blow. Their testimony differed as to what was said between the two and who struck whom first. Other witnesses testified that they did not see what had happened. Whether the petitioner's or the state trooper's testimony was truthful is, of course, a question for the jury to decide.

Prior to trial, the petitioner made a timely objection to the manner in which the jury panel was selected. It was alleged that the Albany County jury system excluded blacks, students and other groups in the community and that the

selection procedures denied petitioner due process and equal protection of the laws as guaranteed by the Fourteenth Amendment and the right to be tried by an impartial jury as guaranteed by the Sixth Amendment.

A hearing was held to resolve this challenge. (The complete transcript of the pretrial hearing is Appendix pp. A5-76.) After the presentation of the evidence, the trial court judge held that the petitioner had failed to establish the claim that the jury was selected in a manner which violated the Constitution of the United States (A 74-76).*

After conviction in the trial court, the petitioner appealed to the Appellate Division, Third Department. On October 18, 1973, the Appellate Division, Third Department, rejected petitioner's claim that the jury was selected in an unconstitutional manner and affirmed his conviction. (The opinion is on pages A 77-78). Leave to appeal to the Court of Appeals was denied on December 18, 1973. (The Certificate denying leave to appeal to the Court of Appeals is on page A 79.)

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* All bracketed references pertain to page numbers in the Appendix.

ARGUMENT

POINT I

THE SYSTEMATIC AND INTENTIONAL EXCLUSION OF STUDENTS FROM THE PETITIONER'S JURY PANEL WAS CONSTITUTIONALLY IMPERMISSIBLE.

According to the United States Census reports for 1970, approximately 4.3% of the presumptively eligible jurors in Albany County are students (for computation of this percentage see on page A79.) The jury panel list from which the petitioner's petit jury was chosen contained no persons listing their occupation as "student." In addition, an examination of the petit jury panel lists drawn in the two year period prior to the petitioner's trial reveals that while 1,205 names were drawn, only two had listed their occupations as "student", and they were subsequently excused. (These lists are contained in Appendix F / of the record on file with Court.) Thus, less than 0.11% of the names that were randomly selected from the jury drum between January, 1971 and February, 1973 were listed as "students."

The testimony of the Albany County Commissioner of Jurors, Richard P. Haggerty, at the petitioner's pretrial hearing disclosed a policy of excluding students (A 32):

> Q: Are people who are students automatically exluded from jury selection?
>
> A: (by Commissioner Haggerty): They are automatically ... we put them off, we exempt them for the time being until they are out of school...

Further, a deposition of Mrs. Helen Benson, Assistant Deputy Commissioner of Jurors, Albany County, taken on March 19, 1971 in the context of a jury challenge made in the case of People v. Marr, 67 Misc. 2d 113, 324 N.Y.S.2d 608 (Colonie Just. Ct. 1971), disclosed that it was the practice of the Albany

County Jury Commissioner's office at that time to not send questionnaires to those persons who could be identified as "students." (The complete transcript of the record on file with Court of Mrs. Benson's deposition is contained in Appendix F /.) Mrs. Benson deposed (A 83):

> We don't [send questionnaires to] -- students, they can't come out of school and serve until graduation from college, if they're away, they can't come and we can't take them. We're only filling up the file with people who can't serve. (See A 82-85).

At issue herein is whether a prima facie case is shown of a violation of the petitioner's right to be tried by a jury selected in accord with constitutional requirements.

PART A

THE STATISTICAL EVIDENCE OF THE DISPROPORTION OF STUDENTS ON THE LIST OF PROSPECTIVE JURORS IS SUFFICIENT, WHEN CONSIDERED ALONG WITH THE OTHER FACTORS PRESENT, TO ESTABLSIH A PRIMA FACIE CASE OF SYSTEMATIC AND INTENTIONAL EXCLUSION OF STUDENTS.

When it is alleged that a disproportion in the representation of a particular group on the jury list has resulted in a denial of the right to due process and equal protection, as provided in the Fourteenth Amendment, the petitioner has the initial burden of demonstrating, prima facie, the existence of systematic and intentional exclusion.[1] Avery v. Georgia, 345 U.S. 559 (1953); United States

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[1] The petitioner believes that demonstrating that the jury commissioner has systematically and intentionally excluded students as a class is but one way of challenging jury selection procedures. The facts also, it is asserted, establish that the jury commissioner has failed in his affirmative duty to obtain a cross-section of the community on the jury lists. Smith v. Yeager, 465 F.2d 272 (3d Cir. 1972); Salary v. Wilson, 415 F.2d 467 (5th Cir. 1969). It follows that when the facts demonstrate systematic and intentional exclusion of a group, the jury commissioner has also violated his affirmative duty to obtain a cross-section of the community.

ex rel. Geralds v. Deegan, 307 F.Supp. 56 (S.D.N.Y.1969). A prima facie case can be established by showing statistical disparity combined with other factors which compel the courts to conclude that intentional discrimination has occurred. Alexander v. Louisiana, 405 U.S. 625 (1972); United States ex rel. Geralds v. Deegan, 307 F.Supp. 56 (S.D.N.Y.1969).

The statistical underrepresentation of students on the jury lists has been set forth above. The other factors required are aggravating circumstances which demonstrate that the selection procedures used were not neutral. These aggravating circumstances include, but are not limited to, opportunity to discriminate (Avery v. Georgia, 345 U.S. 559 [1953]), the size of the disparity (Turner v. Fouche, 396 U.S. 346 [1970] [60% of the population represented by 30% of the jury list]), the duration of the disparity (Patton v. Mississippi, 332 U.S. 463 [1947]) and, of course, direct testimony of exclusion (Thiel v. Southern Pacific Co., 328 U.S. 217 [1946]).

In the present case, all of the above aggravating factors are found. Over the two year period preceding the petitioner's conviction, virtually no students were chosen for jury duty. Also, the opportunity to discriminate is present since the questionnaires required that each prospective juror state his occupation. The most important factor, however, is the direct testimony of Commissioner Haggerty that his office's practice was to exclude students and the deposition of Assistant Deputy Commissioner Benson in 1971 that persons who could be identified as students were not sent questionnaires. All these factors together, it is submitted, show that students were systematically and intentionally excluded from jury duty as a class.

PART B

THE SYSTEMATIC AND INTENTIONAL EXCLUSION OF STUDENTS AS A CLASS IS CONSTITUTIONALLY IMPERMISSIBLE.

The United States Constitution prohibits the arbitrary exclusion of a class of persons from jury selection. William v. Florida, 399 U.S. 78 (1970), Carter v. Jury Commission of Green County, 396 U.S. 320 (1970). As the Supreme Court recently stated, the arbitrary exclusion of "any well-defined class of citizens offends a number of related constitutional values." Peters v. Kiff, 407 U.S. 493,498 (1972).

To be determined by the Court is whether "students" constitute a "well-defined class of citizens." A leading Supereme Court decision on this question is Thiel v. Southern Pacific Co., 328 U.S. 217 (1946). There the Court said:

> [The cross-section of the community requirement] does not mean, of course, that every jury must contain representatives of all economic, social, religious, racial, political and geographical groups of the community ... But it does mean that prospective jurors shall be selected by court officials without the systematic and intentional exclusion of any of these groups.

In Thiel, the group which could not arbitrarily be excluded was "daily wage earners," which constituted approximately 5% of the area's population. 328 U.S. at 223 . Later cases have held that manual laborers, young people, the less educated and ethnic groups are all sufficiently well-defined groups which may not be arbitrarily excluded. See, e.g., Hoyt v. Florida, 368 U.S. 57 (1961); United States v. Butera, 420 F.2d 564 (1st Cir. 1970).

Only two cases have been found dealing with the exclusion of students. In both cases, the exclusion of students was held to be improper. In People v. Marr, 67 Misc2d 113, 324 N.Y.S.2d 608 (Colonie Just. Ct. 1971), a jury challenge involving the Albany County jury system, the court found that "'students' have been intentionally and systematically excluded from the jury lists as a class." (emphasis in original) (The entire Marr opinion is contained in Appendix C of the record) The court cited Thiel in disapproving the exclusion of students and went on to hold that young people were systematically excluded from jury selection. More recently, the Supreme Court of the State of New York, Erie County, has held that students may not be excluded from jury selection as a class. In People v. Attica Brothers, 79 Misc. 2d 492, 359 N.Y.S.2d 699 (Supreme Court, Erie County June 27, 1974), the court held that students were a class within the meaning of Thiel and ordered that a new jury list be made. (The decision of Judge King is contained in Appendix F of the record)

There is no statutory justification for the jury commissioner's blanket exclusion of students. While New York's Judiciary Law provides certain exclusions from jury duty, students are neither disqualified nor granted an exemption (See Judiciary Law, § 662 [Qualifications of jurors], § 664 [Disqualifications] and §665 [Exemptions]). The Legislature has apparently found no reason to automatically disqualify or exempt all students.

At the pretrial hearing, the only reason the Commissioner gave for the disqualification of all students was (A 32):

> [B]ecause some of them put on the back [of the questionnaire] that they are in school and they won't be home until a certain time ...

While it may be proper for the Court to excuse any student who can demonstrate that jury duty would involve an undue personal hardship, the complete exclusion of all students, regardless of individual hardship, is not constitutionally permissible. Such was the practice so heartily condemned in Thiel, where the Court stated:

> It is clear that a federal judge would be justified in excusing a daily wage earner for whom jury service would entail an undue financial hardship. But that fact cannot support the complete exclusion of all daily wage earners regardless of whether there is actual hardship involved. Here there was no effort, no intention, to determine in advance which individual members of the daily wage earning class would suffer an undue hardship... Jury service is a duty that cannot be shirked on a plea of inconvenience or decreased earning power. Only when the financial embarrassment is such as to impose a real burden and hardship does a valid excuse of this nature appear. Thus a blanket exclusion of all daily wage erners, however well-intentional and however justified by prior actions of trial judges, must be counted among those tendancies which undermine and weaken the institution of jury trial." (emphasis added) 328 U.S. at 225-225

The Court also stated at 328 U.S. at 220:

> Jury competence is an individual rather than a group or class matter. That fact lies at the very heart of the jury system. To disregard it is to open the door to class distinctions and discriminations which are abhorrent to the democratic ideals of trial by jury.

Thus, where the only reason for the blanket exclusion of students as a class is administrative efficiency, the Supreme Court has long ago held this exclusion to be constitutionally impermissible.

PART C

FOR PUBLIC POLICY REASONS THE BLANKET EXCLUSION OF STUDENTS FROM JURY DUTY SHOULD NOT BE UPHELD BY THE COURT.

Although at one time students were considered a valuable asset to the nation, during the late sixties and early seventies, students were more often perceived as long haired. militant and disrespectful towards adult authority. During this period a schism occurred between the nation and its youth. Since the termination of the Viet Nam War, recent exposures of corruption have further alienated the youth.

It is important that students be reintegrated into the American system. As the Supreme Court held in Thiel, the American tradition of trial by jury requires that all groups of the community participate in the jury system. To disenfranchise students from the American jury system and deny all students access to participate in the legal process of the United States, is to enhance the alienation between the generations. It is constitutionally required and makes common sense as a practical matter to encourage students to participate in one of the basic cornerstones of our democratic system - the trial by jury. To quote Judge Tate's opinion in People v. Marr, 67 Misc. 2d at 119:

> The Court is aware of the alienation of many of our youth from the institutions of government and feels strongly that participation in government, whether by jury duty or voting or other means, will tend to decrease this sense of alienation. Jury services is an important educational experience for the citizen. It encourages the development of civic responsibility as well as an interest in, and respect for, the law and its enforcement. For these reasons, as well as the primary one of providing a fair trial, the officials who administer the jury system should take whatever positive steps are necessary to insure that young adults are fairly represented on jury lists.

Despite this directive from Judge Tate on September 10, 1971 the Albany County Jury Commissioner intentionally continued to exclude young adults from jury service by automatically excluding students. This practice was still in effect seventeen months later in February, 1973 when petitioner's jury was selected. Petitioner was tried and convicted before a jury which was constitued in violation of the Fourteenth and Sixth Amendments to the United States Constitution. His conviction should not be allowed to stand.

PART II

THE UNDERREPRESENTATION OF BLACKS ON THE PETITIONER'S JURY PANEL WAS CONSTITUTIONALLY IMPERMISSIBLE.

According to the United States Census reports for 1970, 4.4% of the persons in Albany County twenty-one years and older and thus presumptively eligible for jury duty are black (A 80). / However, of the sixty-five potential jurors on the jury panel from which the petitioner's petit jury was chosen, only one person was black, or less than two percent of the jury panel. The disparity is more apparent when considering that fifty of the propective jurors were from the City of Albany which is over eleven percent black. The lone black on the jury panel was from the City and thus, while eleven percent of the City was black, only two percent of the City residents on the jury panel were black (A 55-66).

The Commissioner of Jurors testified at the pretrial hearing that questionnaires were sent to names randomly selected from various sources. He also testified that the response to these questionnaries from the black community was "very poor, very poor" (A 47). No procedures were instituted to ensure responses from all those who were sent questionnaires (A 27-28). Apparently realizing that the procedures he used underrepresented blacks, the Commissioner testified that his practice was to send extra questionnaires to the areas of the county which were believed by the Commissioner to contain a large percentage of blacks (A 48-49). The Commissioner also testified that he talked to "people" in these areas, requesting them to encourage blacks to return the questionnaires (A 38). There was no

testimony, however, that these practices increased the numbers of blacks returning questionnaires.

The question presented in Point II is whether the petitioner has shown a prima facie case of underrepresentation of blacks and more generally whether it is constitutionally impermissible for the state, through the Commissioner of Juror's Office, to operate a jury selection process which is not in conformity with New York's Judiciary Law and which knowingly fails to result in a percentage of blacks on the jury lists equal to the percentage of potentially eligible black jurors in the community.

PART A

THE ALBANY COUNTY COMMISSIONER OF JURORS USED A SELECTION PROCESS WHICH KNOWINGLY UNDERREPRESENTED A LARGE NUMBER OF BLACKS AND BY CONTINUING TO USE THIS PROCEDURE, WHILE BEING AWARE OF ITS CONSEQUENCES, HAS INTENTIONALLY EXCLUDED BLACKS FROM THE PETITIONER'S JURY PANEL, IN VIOLATION OF THE DUE PROCESS AND EQUAL PROTECTION CLAUSES OF THE FOURTEENTH AMENDMENT.

The courts have long recognized that the Constitution prohibits arbitrary exclusions from jury duty based on race. Swain v. Alabama, 380 U.S. 202 (1965); Strauder v. West Virginia, 100 U.S. 303 (1879). Where exclusion of blacks is shown, the Federal courts have not been reluctant to set aside state court convictions. Whitus v. Georgia, 385 U.S. 545 (1967); Patton v. Mississippi, 332 U.S. 413 (1947).

In the present case, the petitioner has shown that the percentage of blacks on his jury panel was less than half the percentage of blacks presumptively eligible for jury duty in Albany County. Also shown is that even among those jurors chosen from the City where most of the blacks in the county reside, the number of blacks selected for jury duty was disproportionately small. An expert witness testified at petitioner's pretrial hearing that such an underrepresentation could not statistically be considered random (A 57-58, 65-66).

When faced with statistical underrepresentation of a particular group on jury panels, the courts have often stated that to demonstrate a violation of the Fourteenth Amendment the petitioner must show not only that the group was underrepresented, but also that such exclusion was intentional. Avery v. Georgia, 345 U.S. 145 (1968). While the courts originally had no difficulty in finding intentional exclusion (as in Strauder where a state statute specifically prohibited blacks from serving on juries) as discrimination became more subtle, the courts' task became more difficult. Thus, in Neal v. Delaware, 103 U.S. 370 (1881), the Supreme Court held unconstitutional a jury selection procedure where the statute was racially neutral on its face, but in practice was administered to exclude blacks.

In Smith v. Texas, 311 U.S. 128 (1940), the Supreme Court held that showing intentional exclusion was not dependent on establishing that the jury commissioner excluded blacks individually. In Smith the Court held unconstitutional a manner of selection which had the effect of excluding blacks, regardless of whether the jury commissioner actually "intended" to exclude blacks when the method of selection was established. The Court held that it was unconstitutional that the jury selection system worked in such a manner as to exclude blacks. In petitioner's case there is no significant difference. Jury Commissioner Haggerty testified

that his voluntary questionnaire system produced few blacks because, for one reason or another, they did not respond to the questionnaires. While the Commissioner possessed the statutory power to ensure that all questionnaires were answered, and, in fact, was mandated by statute to use these powers in all cases where the questionnaires were not answered (Jud. Law §§657 & 659), the Jury Commissioner chose not to follow the statute. The failure of juror selection officials to comply with statutorily prescribed procedures has been regarded as some evidence of unconstitutionality. Bukolich v. Jury Commission of Greene County, 298 F. Supp. 181 (N.D. Ala. 1968), aff'd, 396 U.S. 320 (1970).[2]

It must be assumed that had the Jury Commissioner used these powers that the percentage of blacks on the jury panel would have been substantially equal to the percentage of blacks in the county presumptively eligible for jury duty. Even had this been a case where the Commissioner was unaware of the results of his conduct, such neglect should not be excused. However, here the Commissioner from his own testimony was fully informed that the selection methods he used resulted in a disproportionate number of blacks on the jury lists. That the Commissioner testified that some "people" were talked to and told to encourage blacks to respond to questionnaires is not sufficient to relieve the Commissioner of responsibility for his selection procedures. Neither is the sending of extra questionnaires to those areas of the county believed by the

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[2]See Point III of this memorandum for a fuller discussion of the Commissioner's deviation from the requirements of the Judiciary Law.

Commissioner to be populated by many blacks, when it was known that the chances of the questionnaires sent to blacks being answered were slight. The very fact that blacks were underrepresented on the petitioner's jury panel indicates that the effects of these actions by the Commissioner were negligible. He had at his command the means to enforce the law and decided against using it.

It is no answer to this argument that black people who have received questionnaires may have failed to return them. It is the defendant who is being tried and it is his right to due processs and equal protection which must be protected. He has a right to be tried before a jury selected from a representative cross-section of the community.

The Judiciary Law provides that such questionnaires must be answered (§659) and gives the Commissioner the power to enforce that responsibility. Furthermore, the Supreme Court has repeatedly stated that jury duty cannot be shirked, but is a "duty" as well as a "privilege", and an excuse from such duty will not be permitted without a showing of justification, such as an economic hardship. Thiel v. Southern Pacific Co., 328 U.S. 217 (1946). The fact that black people who receive questionnaires may fail to answer them does not permit the Jury Commissioner to rely upon such failure and continue a selection procedure at odds with the statute which he knows results in few black jurymen.[3] The actions of the Commissioner in knowingly continuing a system whereby blacks are not adequately represented constitutes systematic and intentional exclusion in violation of petitioner's rights to equal protection and due process of law.

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[3] "[T]hose charged with administering the jury selection machinery may not transfer to the negro community, or to any other segment of the community, the responsibilities placed by law upon them, nor may they transmute insufficient methods into effectual ones on the basis that negroes are not sufficiently responsive." Salary v. Wilson, 415 F2d 467, 472 (5th Cir. 1969) (emphasis added)

PART B

THE SIXTH AMENDMENT, WHICH IS APPLICABLE IN THIS CASE, AND THE FOURTEENTH AMENDMENT IMPOSE AN AFFIRMATIVE DUTY ON THE JURY COMMISSIONER TO ENSURE THAT THE PETITIONER'S JURY PANEL IS SELECTED FROM A FAIR CROSS-SECTION OF THE COMMUNITY. THE COMMISSIONER HAS BREACHED THAT DUTY BY FAILING TO CONFORM HIS METHOD OF SELECTION TO A SYSTEM WHICH WILL PRODUCE JURY LISTS REASONABLY APPROXIMATING A CROSS-SECTION OF THE COMMUNITY.

The petitioner was tried in 1973, after the date of Duncan v. Louisiana, 391 U.S. 145 (1968) and Williams v. Florida, 399 U.S. 78 (1970). Thus, the Sixth Amendment, in addition to the Fourteenth, governed the jury selection procedures. Under the Sixth and Fourteenth Amendments, jury commissioners have a duty not only to avoid selection methods that have the effect of excluding blacks, but also to utilize methods which are reasonably likely to result in the proper representation of blacks on the jury panels.

Recent examples of the application of the affirmative duty doctrine are Smith v. Yeager, 465 F.2d 272 (3rd Cir. 1972) and Ford V. Hollowell, 385 F.Supp. 1392 (N.D. Miss. 1974). In Smith, the Court held that the intentions of the jury commissioners were irrelevant. The sole issue for the Smith Court, it was held, was whether the jury commissioners have conformed their "method of selection to a system that will produce jury lists reasonably approximating that cross-section [of their community]." (465 F.2d at 282) The Ford Court went further and held that:

> "It is not necessary, however, to a finding of discrimination that the officials acted without good faith, for objective results largely govern in judging

> the constitutionality of jury selection methods. Whatever the jury selection plan, whatever the intent with which it is implemented or executed, if it results in a long-continued exclusion or dramatic underrepresentation of blacks on the jury lists, it is constitutionally infirmed... The county officials charged with jury selection knew or had the means of knowing that the voter registration lists failed to be representative of adult black males. Armed with this knowledge, the officials having the task of selecting jurors to serve...were under an affirmative duty to utilize a selection method which had the potential for yielding juries which represented a fair cross-section of the qualified citizens of the community. If a fair cross-section is consistently lacking, then, without more, it is established that the jury commissioners have failed in their duty." (385 F.Supp. at 1399).

It is clear from Commissioner Haggerty's testimony that his method of selection did not obtain a percentage of blacks equal to the percentage of blacks in the community presumptively eligible for jury duty. Yet he failed to conform his manner of selection to the method mandated by New York's Judiciary Law, which assumedly would have obtained a proper cross-section of the community, as it was designed to do. Because of this failure, the Jury Commissioner has breached his affirmative duty to obtain a proper cross-section of the community.

In addition, after testifying that he was aware that blacks did not respond to the questionnaires as often as whites, Commissioner Haggerty stated that he granted exemptions to blacks merely upon request (A 39).

> Q. ..."Are some of the black persons who are excused, who are not added to the jury list, persons who are persons other than ones who would be either disqualified or exempted by the statute?
>
> A. (No response.)

Q. "In other words, are you doing this [not adding their names to the jury list] at their request primarily?"

A. (by Commissioner Haggerty) "Yes."

Thus, in addition to knowing that there was an underrepresentation of blacks on the jury lists, the Commissioner excused qualified blacks whether or not they were statutorily disqualified or exempted. Such a practice is clearly not authorized by the Judiciary Law and further demonstrates not only that the Commissioner failed to affirmatively obtain a proper cross-section of the community, but also that he acted without authority in allowing the disparity in the representation of blacks on the jury lists to increase.

To permit a state through a jury commissioner to continue a practice of jury selection which results in the underrepresentation a significant segment of the community (especially the black segment whose husbands and sons are too often the criminally accused whose guilt is weighed by the jury) is to undermine the American system of trial by a jury of one's peers. Certainly a black defendant must question the validity of his conviction when he is tried by a jury which has been chosen through a process which does not foster equal black representation. The Constitution of the United States does not permit such discrimination. Since petitioner's jury was unconstitutionally selected, its decision cannot stand. His conviction should be set aside and the State should not be permitted to retry the petitioner until such time as he can be tried before a constitutionally selected jury.

POINT III

THE FAILURE OF COMMISSIONER HAGGERTY TO COMPLY WITH THE REQUIREMENTS OF JUDICIARY LAW §§650-686 IN SELECTING PROSPECTIVE JURORS DEPRIVES PETITIONER OF HIS RIGHT TO AN IMPARTIAL JURY DRAWN FROM THE ENTIRE COMMUNITY IN VIOLATION OF HIS RIGHT TO EQUAL PROTECTION OF THE LAW.

It is axiomatic that Petitioner Anderson is entitled to the same protection of the law afforded other criminal defendants in the absence of a rational reason related to a legitimate state purpose or interest justifying unique treatment. Dowd, Warden v. U. S. ex rel. Cook, 340 U. S. 206 (1951). Petitioner Anderson, however, was denied equal protection of the law because the Albany County Jury Commissioner failed to abide by the New York State Judiciary Law §§650-689 in selecting trial jurors. These sections of the Judiciary Law govern the selection of jurors in counties including Albany County outside cities having a population of one million or more. The clear purpose of the statute is to assure to criminal defendants a trial jury drawn in a fair, impartial and uniform manner from a cross-section of the entire community. It must be assumed that county jury commissioners whose conduct in office is controlled by these sections of the Judiciary Law abide by the requirements of that law. There exists no rational reason related to a legitimate state interest justifying Commissioner Haggerty's disregard of these lawful requirements. The legislature has determined that it is in the state's interest to have a jury selected in the manner prescribed in sections 650-686. Commissioner Haggerty by grossly deviating from the statutory procedures has deprived petitioner of the benefits embodied in the act and has violated his right to equal protection of the law.

* Relevant sections of the law are contained in an addendum to this Brief.

Commissioner Haggerty in his testimony describes the jury selection methods employed in Albany County. Specific instances of his non-compliance with the statute are described in the following paragraphs. The instances are set-forth in the sequential order followed by the Commissioner commencing with the identification of prospective jurors to entering their names in the jury drum.

1. Section 656 of the Judiciary Law grants to the justices of the Appellate Divisions of the Supreme Court the authority to adopt rules to implement the provisions of the Judiciary Law. Section 658 of the Judiciary Law prescirbes sources of names that the commissioner may use in selecting the names of persons eligible to serve as jurors. Among those sources are listed "the latest census enumeration, the latest published city, town or village telephone or other directory, the assessment rolls, the voters' registry list and any other general source of names." The Appellate Division, Third Department adopted rule 820.4 to supplement §658. (Codes, Rules and Regs of the State of New York, Vol. 22A, sub. ch. C §820.4)/ Addendum p. 46 That rule states "In ascertaining the name of persons eligible to serve as trial jurors all sources of information set forth in section 658 of the Judiciary Law should be used." Yet on the record Commissioner Haggerty mentions having used the telephone book, the city directory, and the election district books (A 25), but never mentions, and in fact specifically denies, having used the assessment rolls and the census enumeration (A 43). He disregarded the Appellate Division directive to draw from the broadest sampling of names in order to get a true cross-section of the entire community.

2. Section 657 of the Judiciary Law prescribes the duties of jury commissioners. It states in its relevant parts:

> "In accordance with the law and the rules adopted pursuant thereto, each commissioner shall

> (1) determine the competence, qualifications, eligibility and liability of individuals for jury service, and make inquiries and conduct examinations of persons as to themselves, and if necessary as to others, anywhere within the county and shall have power to issue and enforce notices, mandates and summonses,
>
> (2) hear and determine claims for exemption from jury service, ...
>
> (8) take any steps necessary to bring about punishment of those who violate the laws and rules relating to the selection, drawing, summoning and empaneling of jurors ...
>
> (10) do all things necessary and proper for the true execution of his powers and duties."

After identifying names of prospective jurors on the lists referred to in Judiciary Law §658, the Commissioner is given two alternative means for fulfilling his duty to "determine the competence, qualifications, eligibility and liability (emphasis added) of individuals for jury service." The commissioner may either send out a questionnaire regarding a potential juror's qualifications, or he may summon the prospective juror to appear before him for a personal interview (Judiciary Law §659). In subdivision (1) of §659, the statute mandates that a potential juror who is sent a questionnaire must fill it out, sign and return it within one week. In subdivision (2) the statute established a requirement that a summoned potential juror, or a person cognizant of relevant facts appearing for him, appear if served personally not less than three days after service of the summons. Historically, jury service has been considered a duty of citizenship, Thiel v. Southern Pacific Co., 328 U.S. 217, 225 (1946). The intent of the statute is clearly to require that those selected as potential juors from the lists in section 658 submit to examination as to their qualifications. They are all obligated to serve if qualified under Section 662, unless they are

specifically disqualified under section 664, or are exempted and choose to exercise their right to exemption under section 665, or are excused by the judge of the trial court under section 678. The jury Commissioner has a duty to determine eligibility, and liability, to take necessary steps to punish those who violate the law, and to do all things necessary and proper to enforce the law. Section 658 of the statute provides:

> "There shall be continuous search for persons qualified and liable for jury service, in order to obtain as many prospective jurors as necessary and in order to limit as much as possible repetition of jury service."

He does not have the discretion to allow prospective jurors to avoid their duty to serve if they are eligible.

Commissioner Haggerty disregards the mandate of the statue. While he uses exclusively the questionnaire method, he acknowledges repeatedly on the record (See A 27, 28, 42, 47 and 49) that the response rate to his questionnaires is very low. Despite the statutory requirement that the questionnaire "must" be answered, he took no steps to punish those who violate the law. He did not include with the questionnaire an instruction sheet advising prospective jurors that they must answer the questionnaire, sign and return it promptly; nor did he summon prospective jurors to appear before him if they did not return the questionnaires. In effect he allowed 75% (See Commissioner's Testimony, A 27 and 30) of the people, who were sent questionnaires and whom he was obligated to examine as to their liability and eligibility, to avoid their duty to serve, simply by not answering the questionnaires they were sent.

The Judiciary Law does not authorize this exemption from service. By failing to act in accordance with the Judiciary Law, Commissioner Haggerty

excused from jury service three-quarters of the potentially eligible jurors in Albany County. Petitioner is entitled to have determined the eligibility of all propective jurors identified by the Commissioner through the source lists, and to have the names of all eligible jurors placed in the jury drum as is done for other criminal defendants outside Albany County.

3. Once Commissioner Haggerty receives the answered questionnaires from 25% of the people to whom they were sent, his authority to declare prospective jurors ineligible is limited. He is empowered under section 662 of the Judiciary Law to determine whether or not a person is "qualified."

> "In order to be qualified to serve as a juror a person must:
>
> 1. Be a citizen of the United States, and a resident of the county.
>
> 2. Be not less than twenty-one, nor more than seventy-two years of age, provided however, that a person between seventy and seventy-two years of age shall be excused at the request of any party to the action and such request shall not constitute a peremptory challenge.
>
> 3. Be in the possession of his natural faculties and not infirm or decrepit.
>
> 4. Not have been convicted of a felony or of a misdemeanor involving moral turpitude.
>
> 5. Be of sound mind and good character; of approved integrity; of sound judgment; and able to read and write the English language understandably.
>
> A person dwelling or lodging or having or maintaining a dwelling or lodging in a county for the greater part of the time between October first and June thirtieth next thereafter, or a resident therein more than six months of the year, is a resident of that county, within the meaning of this section."

Certain public officers and employees were automatically "disqualified " (Judiciary Law §664). Certain individuals were "exempt" if they claimed their exemptions.

> "§665. Exemptions
>
> Each of the following persons only, any inconsistent provision

of law to the contrary notwithstanding, although qualified, is entitled to exemption from service as a juror upon claiming exemption therefrom:

1. A clergyman or minister of religion officiating as such and not following any other calling.

2. A practicing physician, surgeon, podiatrist or dentist having patients requiring his daily professional attention, a licensed pharmacist actually engaged in his profession as a means of livelihood, a duly licensed embalmer actually engaged in his profession as a means of livelihood, and an optometrist actually engaged in the practice of optometry.

3. An attorney or counsellor at law regularly engaged in the practice of law as a means of livelihood.

4. [See also subd. 4 below] A person belonging to the armed forces of the United States, and the active national guard and naval militia of the state.

4. [See also subd. 4 above] An active member of the army, air force, navy or marine corps of the United States, and the active national guard and naval militia of the state.

5. A member of a fire company or department or police force or department duly organized according to the laws of the state or any political subdivision thereof and performing his duties therein, or an exempt volunteer firemen, as defined in section two hundred of the general municipal law.

6. A captain, engineer, or other officer, actually employed upon a vessel making regular trips; or a licensed harbor or river pilot actually following that calling.

7. A woman.

8. An editor, editorial writer, a sub-editor, reporter or copy reader, actively and regularly empolyed in the handling or gathering of news for a daily, semi-weekly or weekly newspaper.

9. A person over seventy years of age."

Qualification, disqualification and exemption are the primary considerations available to a jury commissioner when determing eligibility for jury service based upon answered questionnaires. He has no authority to excuse anyone or to postpone jury service.

Commissioner Haggerty has exceeded his authority under the statute. He has created additional classes of disqualified people, namely the wives of lawyers and policemen (A 28), judgment debtors (A 30), and students (A 32). He has excused individuals from jury service who claimed hardship of one kind or another even though they were not disqualified and were not entitled to one of the limited statutory exemptions. Without actually examining as to fitness (§659), but relying upon the mere assertion of hardship, he has excused black men and women (A 39 and 47) and generally has granted excuses upon request (A 45, 47 and 50). He excludes from the jury drum, which by order of the Appellate Division, Third Judicial Department must contain 10,000 names, 22ANYCRR820.1, names of individuals who claim hardships at the time they answer questionnaries but whose names may well not be drawn from the drum for years when the hardship no longer exists. Sensibly the New York State Legislature gave only the judge of the trial court the power to excuse or postpone jury service for someone actually called to serve. Effective September 1, 1974 this power to excuse has been extended to jury commissioners to be exercised only after an individual's name has been drawn from the drum and he has been actually called to serve and only if the appropriate Appellate Division has seen fit to authorize the commissioner to exercise this power. Judiciary Law §678 as amended. The Appellate Division, Third Judicial Department encompassing Albany County has now given jury commissioners in this Department the authority to excuse or postpone jury service. Yet prior to the time of petitioner's trial, Commissioner Haggerty admittedly exceeded his power by excusing prospective jurors upon request long before they were actually called to serve.

Commissioner Haggerty's gross deviations from the uniform jury selection procedure conceived by the Legislature for counties outside cities having a population

of one million or more has substantially defeated the purpose of the statute. He has taken a statutory procedure designed to implement each citizen's duty to serve on a jury in a manner that is fair and impartial for the benefit of the jurors and those whose cases are decided by juries and has changed it into a strictly volunatry system. As a result he has limited the available jury pool to those individuals who for one reason or another are willing to or can afford to serve. The benefit of the statute to provide petitioner with a source of jurors selected from the entire community in a random manner has been destroyed. Criminal defendants in counties outside Albany County operating pursuant to Judiciary Law §§650-686 assumedly enjoy the benefits of this law. There is no valid reason why petitioner does not have this same right.

Petitioner does not allege that the Judiciary Law itself sanctions discriminatory treatment, rather he alleges that he was denied equal protection because Albany County did not adhere to the requirements of that law. The mere administrative convenience which may have been gained by the Jury Commissioner when deviating from his duty under the law can not justify his discriminatory practice. The state and the petitioner has a strong interest in guaranteeing the appearance and reality of an impartial random selection of jurors from the entire community so that the jury finally drawn will be as close as possible to a representive cross-section of that community. No legitimate state interest or purpose is served by the failure of Commissioner Haggerty to follow the statutorily mandated procedure.

Infringement by public officials upon statutorily guaranteed rights has been censored by the courts in numerous instances on equal protection grounds.

In Dowd v. Cook, 340 U.S. 206, (1951), a state prisoner's attempt to obtain his statutorily granted appeal from conviction was prevented by a prison warden's suppression of his appeal papers. Despite the fact that the suppression was in accordance with prison rules, the United State Supreme Court held that "this denial of the statutory right of appeal was in violation of the equal protection clause of the Fourteenth Amendment," Dowd v. Cook, Supra, p. 208. The Second Circuit Court of Appeals also recognized this fundamental proposition in U.S. ex rel. Diblin v. Follette, 418 F.2d 408 410 (1969):

> "The constitutional equal protection guarantee requires that when the state provides appellate review of criminal convictions, all persons must have the same opportunity to obtain such review. Griffin v. Illinois, 351 U.S. 12, 76 S.Ct. 585, 100 L.Ed. 891 (1956); Douglas v. California, 372 U.S. 353, 83 S.Ct. 814 9 L.Ed.2d 811 (1963). As part of this requirement, the state may not deprive a defendant of notice that appellate review is available or hinder his attempts to secure that right. Dowd v. United States, ex. rel. Cook, 340 U.S. 206, 71 S.Ct. 262, 95 L.Ed. 215 (1951) United States ex rel. Smith v. McMann, 417 F.2d 648 (2 Cir. October 10, 1969).

This clear right to equal treatment pursuant to state statute was also affirmed in dicta in the Fifth Circuit case of Loper v. Beto, 440 F.2d 934 (1971) with regard to a parole violation:

> "...it is elemental that the right to equal protection under state law includes the right to be tried in the same manner as others accused of similar infractions. Once a state has determined to provide by statute the right to a hearing on the questions of parole revocation, it must afford the benefit of that procedural right equally to all parolees in similar circumstances, and failure to afford a hearing after a legitimate request in circumstance and under facts which meet the requirements and provisions of the state statute deprive a parolee of equal protection of the law."

See also Conner v. Picard, 434 F.2d 673 (1st Cir. 1970). Petitioner has the constitutional right to be tried by a jury drawn from a jury pool representative of a cross-section of the entire community. He has the statutory right embodied in Judiciary Law §§650-686 to have prospective jurors chosen as prescribed by those sections of the law which were enacted to protect his constitutional right to trial by a jury of his peers. While some other method of selection could have been legislatively formulated, he was entitled to have the benefits of the procedures which were enacted. The Albany County Jury Commissioner's unjustifiable failure to afford him those benefits which are enjoyed by criminal defendants outside Albany County amounts to a clear violation of petitioner's right to equal protection of the law. Fortune Society v. McGinnis, 319 F.Supp. 901 (S.D.N.Y. 1970).

POINT IV

PETITIONER HAS EXHAUSTED THE REMEDIES AVAILABLE IN THE COURTS OF NEW YORK STATE ON THE QUESTION OF THE ALBANY COUNTY JURY COMMISSIONER'S FAILURE TO ABIDE BY THE PROVISIONS OF §§650-686 OF THE NEW YORK JUDICIARY LAW IN SELECTING TRIAL JURORS IN VIOLATION OF PETITIONER'S RIGHT TO THE EQUAL PROTECTION OF THE LAW.

The third basis for petitioner's challenge to the legality of his conviction rests upon the glaring failure of the Albany County Jury Commissioner to abide by the provisions of §§650-686 of the New York Judiciary Law in selecting trial jurors. This failure is alleged to have denied Mr. Anderson his right to an impartial jury drawn from a cross-section of the entire community in violation of his right to the equal protection of the law. Judge Edmund Port in his March 17, 1975 Memorandum-Decision and Order (A 1 - 4) held: "An examination of the petitioner's brief on appeal to the Appellate Division reveals that the third claim raised herein was not exhausted in the state courts; accordingly; this claim will be denied and dismissed for that reason " (A 2).

The substance of this claim has been fairly presented to the courts of New York State and they have had the first opportunity to rule upon it.

The initial challenge to the jury panel made prior to trial put in issue the constitutionality of the jury selection system on due process and equal protection grounds. A copy of the Challenge

To Jury Panel is contained in the Appendix/ (A 86-88). The focus of the argument was that the selection procedure systematically excluded blacks, young adults and persons of lower economic status. The method of discrimination challenged was the failure of the jury commissioner to follow the statutory scheme to assure minority representation. Heavy reliance was placed on Bokulich v. Jury Commission of Green County, 298 F.Supp. 181 (N.D. Ala. 1968), aff'd Carter v. Green County, 396 U.S. 320 (1970) which emphasized the discriminatory effect of deviations from the statutory mandates governing jury selection.

The hearing which was held pursuant to the pretrial motion regarding jury selection revealed glaring deviations from the statutory scheme. Point III of this brief identifies the testimony by Commissioner Haggerty which amounts to an admission that he converted a legislatively mandated compulsory jury selection procedure into a totally voluntary system. The facts regarding the Commissioner's deviation from the Judiciary Law are all clearly evident in the record even though Judge Clyne in his decision denying the motion stated: "A capsule summary of the Commissioner's testimony establishes that such selection is in accordance with the pertinent provisions of the Judiciary Law" (A 75). Throughout the proceedings in state court the issue of conformity with state law was never a hidden issue.

On appeal to the Appellate Division: Third Judicial Department the appellant's first Point in his brief was entitled:

"DEFENDANT'S CHALLENGE TO THE JURY PANEL SHOULD HAVE BEEN SUSTAINED ON THE GROUND THAT THERE HAS BEEN SUCH A DEPARTURE FROM THE REQUIREMENTS OF THE JUDICIARY LAW IN THE DRAWING OF THE PANEL AS TO RESULT IN A SUBSTANTIAL PREJUDICE TO THE DEFENDANT."*

While on appeal to the Third Department, the phrase "Denial of Equal Protection" was not used in reference to the marked deviations from the Judiciary Law, substantially the same argument was raised as is being raised in this court - failure to follow the statute has deprived appellant of the right to a jury selected from the entire community, a right afforded to defendants whose jurors are selected in accordance with the Judiciary Law. The Appellate Division, having been presented with these deviations, felt compelled to acknowledge in its decision that "the hearing showed certain irregularities in the system as it functioned in Albany County" (A-78). Again, the issue of conformity with state law was before the appeals court.

An application for leave to appeal to the New York Court of Appeals was made and denied. That Court had access to all the briefs and records in this matter. Criminal Procedure Law §460.20(4).

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*Due to an oversight by appellant's counsel, this Point in appellant's memorandum for the Appellate Division was not submitted with the remainder of that memorandum to the District Court. Counsel did not have in his possession the entire memorandum at the time the application for a Writ of Habeas Corpus was submitted and did not realize the full extent to which appellant's criminal appeals counsel had elucidated upon the deviations from the Judiciary Law by the Albany County Jury Commissioner. See Appendix/ for entire brief, pages A 89 to 114

Even if Mr. Anderson's third claim was not explicitly raised on appeal from his criminal conviction, the substantial deviations from the Judiciary Law by the Jury Commissioner were so obvious on the record that they in themselves pleaded for a judicial ruling that petitioner had not been treated in a fair and equal manner. The Criminal Procedure Law §470.15(1) provides that an intermediate appellate court "may consider and determine any question of law or issue of fact" appearing in the appellate record "which may have adversely affected the appellant." Case law sanctions review of issues which have not been expressly raised by an appellant. People v. Stubbs, 30 A.D.2d 932 (4th Dept. 1968). Similarly, the Court of Appeals has wide latitude. Criminal Procedure Law §470.35.

The New York courts have had a clear opportunity to rule upon the substance of appellant's third claim and chose not to.

Should this Court find that the courts of New York State have not been fairly presented with the first opportunity to rule upon petitioner's third claim, he asks this Court to find that resort to state processes at this time will be "ineffective to protect (his) rights." 28 U.S.C.A. 2254(b). In the face of what petitioner believes to be a jury selection procedure in complete derogation of the Judiciary Law as revealed by the record, the trial court has already stated that the procedures followed were in accordance with the law (A 75) and the Appellate Division dismissed the "certain irregularities in the system" (A78) which it noticed as being of no consequence. It would be futile to have to return to the state courts on this claim.

Petitioner also asks in the interest of justice that this Court treat his Petition in its entirety. "The exhaustion-of-state-remedies doctrine...reflects a policy of federal-state comity." Picard v. Connor, 404 U.S. 270, 275, 30 L.Ed.2d 438, 443, 92 S.Ct. 509 (1971). It is not jurisdictional. By considering on appeal Mr. Anderson's first two claims, which have been undoubtedly exhausted, this Court is already subjecting his State court conviction to close scrutiny. Consideration of the third claim, which is intertwined with the allegations of discrimination against students and black people, will not significantly expand the scope of that scrutiny. The discrimination claims cannot be decided without some review of the Jury Commissioner's adherence to the dictates of the Judiciary Law. Under these circumstances comity serves no useful purpose and deference to it will only prolong the final resolution of this case at the expense of substantial judicial and legal resources. Petitioner asks in the interest of justice that this Court consider and rule upon all three of his claims.

CONCLUSION

Petitioner respectfully requests this Court to reverse the Order of dismissal of Judge Port dated March 17, 1975 to grant his application for a Writ of Habeas Corpus, to vacate the judgment of conviction rendered on March 8, 1973 in the Albany County Court, to order him discharged from the custody of the New York State Department of Correctional Services and to rule that he cannot be retried other than before a constitutionally firm jury selected in strict conformity with the New York Judiciary Law.

Respectfully Submitted,

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§ 650. Application of article

The provisions of this article shall apply to all courts in which a jury may be drawn whether such courts are of record or not of record, in each county of the state except counties within cities having a population of one million or more and counties having a population of less than one hundred thousand which shall elect pursuant to section five hundred one of article sixteen of the judiciary law to come under the provisions of such article sixteen. Added L.1954, c. 305, § 1; amended 1955, c. 864, § 1, eff. July 1, 1955.

§ 657. Specific powers and duties of commissioner

The commissioner shall be an officer of all courts of record located in the county in which he acts and shall have authority to administer oaths or affirmations as to any matter relating to his duties under this article or the rules adopted pursuant thereto.

He shall keep a record of all proceedings before him, or in his office.

He shall furnish a copy of each paper filed or proceeding taken in his office, to any person applying therefor and paying the fees, except that answers, data and information obtained in interviewing and examining prospective jurors shall be considered confidential and shall not be disclosed except to the county jury board or as permitted by the appellate divisions. The commissioner shall charge the same fees for furnishing copies of papers as the clerk of a court of record and shall pay over all such fees to the county treasurer.

The commissioner may designate from among the members of his staff, by a certificate filed in his office, any deputy or assistant to perform any of his duties as required by law.

Whenever reference is made to the commissioner in this article or the rules adopted pursuant thereto, such reference shall be deemed to apply also to deputies or assistants duly designated by him, except where the contrary intent is plainly apparent from the context.

In accordance with the law and the rules adopted pursuant thereto, each commissioner shall

(1) determine the competence, qualifications, eligibility and liability of individuals for jury service, and make inquiries and conduct examinations of persons as to themselves, and if necessary as to others, anywhere within the county and shall have power to issue and enforce notices, mandates and summonses,

Amendments on next page

(2) hear and determine claims for exemption from jury service,

(3) prepare ballots for all qualified jurors for use in the supreme court, county court, surrogate's court and district court,

(4) furnish to each city or town clerk on or before the thirty-first day of December, or such other date as may be prescribed by rule of the justices of the appellate division for the use pursuant to section two hundred and twenty of the justice court act, of all inferior courts within the city or town during the ensuing twelve months, a list of the names of qualified jurors resident in the city or town, or a sealed box containing ballots of the names of the qualified trial jurors resident in the city or town, together with a list, alphabetically arranged of the names in the box so furnished, or

(5) furnish to each [illegible]

§ 657

(5) furnish to each clerk, and where there is no clerk, to the justice of any court not of record, or any city or municipal court of record, on or before the thirty-first day of December, or such other date as may be prescribed by rule of the justices of the appellate division for the use of all these inferior courts during the ensuing twelve months, a list of names of qualified jurors resident in the city or town, or a sealed box containing ballots of the names of qualified trial jurors resident in the city or town, together with a list, alphabetically arranged of the names in the box so furnished,

(6) draw panels of grand and trial jurors for all terms of the supreme court, county court, surrogate's court and the district court,

(7) notify and summon jurors drawn for service in those courts for which he has drawn them, or direct the sheriff to notify or summon such jurors,

(8) take any steps necessary to bring about the punishment of those who violate the laws and rules relating to the selection, drawing, summoning and empaneling of jurors,

(9) consult with the county jury board as provided in section six hundred fifty-two, and

(10) do all things necessary and proper for the true execution of his powers and duties.

No part of this section shall operate to impair the right to challenge a particular juror at a trial. Added L.1954, c. 305, § 1; amended L.1955, c. 797, § 1; L.1963, c. 567, § 18, eff. Sept. 1, 1963.

As Amended

§ 657. Specific powers and duties of commissioner

[See main volume for text of first five pars.]

In accordance with the law and the rules adopted pursuant thereto, each commissioner shall

[See main volume for text of (1)]

(2) hear and determine claims for exemption from jury service and, when permitted by rule of the appropriate appellate division, applications for excuses from service and requests for postponement of time of service.

(3) prepare ballots for all qualified jurors for use in the supreme court, county court, surrogate's court and district court.

(4) furnish to each city or town clerk on or before the thirty-first day of December, or such other date as may be prescribed by rule of the justices of the appellate division for the use pursuant to section two hundred and twenty of the justice court act, of all inferior courts within the city or town during the ensuing twelve months, a list of the names of qualified jurors resident in the city or town, or a sealed box, or other device containing ballots of the names of the qualified trial jurors resident in the city or town, together with a list, alphabetically arranged of the names in the box so furnished, or

(5) furnish to each clerk, and where there is no clerk, to the justice of any court not of record, or any city or municipal court of record, on or before the thirty-first day of December, or such other date as may be prescribed by rule of the justices of the appellate division for the use of all these inferior courts during the ensuing twelve months, a list of names of qualified jurors resident in the city or town, or a sealed box or other device containing ballots of the names of the qualified trial jurors resident in the city or town, together with a list alphabetically arranged of the names in the box or other device so furnished.

[See main volume for text of (6) to (10)]

No part of this section shall operate to impair the right to challenge a particular juror at a trial.

As amended L.1970, c. 715, § 1; L.1974, c. 182, § 1; L.1974, c. 227, § 1.

§ 658. Source of names

The commissioner, in order to ascertain names of persons eligible as jurors, may consult the latest census enumeration, the latest published city, town or village telephone or other directory, the assessment rolls, the voters' registry list and any other general source of names. There shall be continuous search for persons qualified and liable for jury service, in order to obtain as many prospective jurors as necessary and in order to limit as much as possible repetition of jury service.

Each public officer of the county and of every city, town or village within the county, shall, upon written request, at all times furnish to the commissioner, without charge, all the information within his control to enable the commissioner to procure the names of persons who may be eligible to serve as jurors, as well as information concerning a person's qualifications or lack of qualifications for jury service. Added L.1954, c. 305, § 1; amended L.1955, c. 797, § 1, eff. July 1, 1955.

§ 659. Examination as to fitness

No person's name shall be entered on a jury ballot or list unless he has stated to the commissioner, in a certificate or questionnaire pursuant to section 210.45 of the penal law, his qualifications in writing in his own hand and has signed such certificate or questionnaire.

In order to ascertain a juror's qualifications, the commissioner may either

(1) mail to the prospective juror a questionnaire form on which to enter the name, address, occupation, claims for exemption and such other questions as the law may require, which the person to whom the questionnaire is mailed must fill out in his own hand, sign and return within one week to the commissioner; or

(2) summon the prospective juror to appear before him for the purpose of filling out the questionnaire and testifying as to the competence, qualifications, eligibility and liability of himself or any other person to serve as a juror and to present claims for exemption or disqualification. Such person shall not be entitled to any fee or mileage when responding for such purpose. Such summons may be served personally or by leaving it at the person's residence or place of business with a person of suitable age and discretion, or by mail. If served personally or by substitution the summons shall require the person summoned to attend not less than three days after service. If served by mail the summons shall require the person summoned to attend not less than five days after the mailing thereof.

One or more successive summonses may be served upon the same person when he fails to attend as required by a former summons. When a person has so attended twice and furnished all information required, he shall not be required to attend again for one year thereafter.

The commissioner may, in his discretion, dispense with examination of the person so notified where another person cognizant of the facts is produced and testifies in his stead and it appears from the testimony of such other person that the person notified is disqualified, not qualified or exempt.

The commissioner may, in his discretion, forward to any appropriate police authorities within the county for checking against the records of such authorities, the names of any or all persons found otherwise qualified by him for jury service.

Notwithstanding the foregoing provisions of this section, the justices of the appellate division may by rule require that, in any county contained within their respective departments,

(a) the questionnaires required in accordance with option numbered (1) above shall be filled out in the prospective juror's own hand, signed and returned to the commissioner,

(b) each prospective juror shall be personally examined by the commissioner,

(c) the names of prospective jurors found otherwise qualified shall be forwarded by the commissioner to the appropriate police authorities within the county for checking against the records of such authorities. Added L.1954, c. 305, § 1; amended L.1955, c. 797, § 1; L.1967, c. 680, § 84, eff. Sept. 1, 1967.

Amendments Below

§ 662. Qualifications of jurors

In order to be qualified to serve as a juror a person must:

1. Be a citizen of the United States, and a resident of the county.

2. Be not less than twenty-one, nor more than seventy-two years of age, provided however, that a person between seventy and seventy-two years of age shall be excused at the request of any party to the action and such request shall not constitute a peremptory challenge.

3. Be in the possession of his natural faculties and not infirm or decrepit.

4. Not have been convicted of a felony or of a misdemeanor involving moral turpitude.

5. Be of sound mind and good character; of approved integrity; of sound judgment; and able to read and write the English language understandably.

A person dwelling or lodging or having or maintaining a dwelling or lodging in a county for the greater part of the time between October first and June thirtieth next thereafter, or a resident therein more than six months of the year, is a resident of that county, within the meaning of this section. Added L.1954, c. 305, § 1; amended L.1955, c. 797, § 3; L.1965, c. 295, § 1; L. 1967, c. 49, § 3, eff. Sept. 1, 1967.

As Amended

§ 662. Qualifications of jurors

In order to be qualified to serve as a juror a person must:

1. Be a citizen of the United States, and a resident of the county.

2. Be not less than eighteen, nor more than seventy-five years of age, provided however, that a person between seventy and seventy-five years of age shall be excused at the request of any party to the action and such request shall not constitute a peremptory challenge.

[*See main volume for text of 3 to 5; closing par.*]

§ 663. Jurors with scruples against death penalty

No person shall be selected to serve as a grand juror or as a trial juror in a criminal action, the punishment for which is or may be the infliction of the death penalty, who has stated in his statement to the commissioner that he has conscientious scruples against the death penalty which would prevent him from finding a verdict of guilty of any crime punishable by death. Added L. 1954, c. 305, § 1, eff. July 1, 1955.

§ 664. Disqualifications

Each of the following officers is disqualified to serve as a juror:

1. Any duly elected federal, state, city, county, town or village official;

2. The comptroller; the attorney-general; the head of a civil department or the head and members of a board, council or commission which is the head of a civil department of the federal, state, city, county, town or village government; members of the state tax commission; members of the state commission of correction; members of the state industrial board; members of the public service and transit commissions; the commissioner of education; the commissioner of agriculture and markets; the commissioner of social welfare; the deputy of each officer specified in this subdivision; the secretary to the governor.

3. A member of congress or of the legislature or of any local legislative body.

4. A judge of a court of record, or not of record, or a surrogate.

5. A sheriff, under sheriff, or deputy sheriff regularly engaged in the performance of his duties.

6. The clerk or deputy clerk of any court.

No public officer or employee of the United States government, or of any state, city or municipality, or of any political subdivision of any of them or of any official board, authority, council, commission, corporation, or other agency of any of them, receiving annual compensation in excess of one thousand dollars from the aforesaid sources, shall serve on any grand jury. Added L.1954, c. 305, § 1; amended L.1955, c. 797, § 3, eff. July 1, 1955.

§ 644-a. Challenge to the panel or array

It is not a good cause of challenge to the panel or array of trial jurors in an action in a court of record

1. that the officer who drew them is a party to, or interested in, the action, or related to a party; or

2. that they were notified to attend by an officer who is a party to, or interested in, the action, or related to a party, or is a resident of, or liable to pay taxes in, a city, village, town, or county which is a party to the action, unless it is alleged in the challenge, and established, that one or more of the jurors drawn were not notified and that the omission was intentional. Added

Amendments on next page

§ 665. Exemptions

Each of the following persons only, any inconsistent provision of law to the contrary notwithstanding, although qualified, is entitled to exemption from service as a juror upon claiming exemption therefrom:

1. A clergyman or minister of religion officiating as such and not following any other calling.

2. A practicing physician, surgeon, podiatrist or dentist having patients requiring his daily professional attention, a licensed pharmacist actually engaged in his profession as a means of livelihood, a duly licensed embalmer actually engaged in his profession as a means of livelihood, and an optometrist actually engaged in the practice of optometry.

3. An attorney or counsellor at law regularly engaged in the practice of law as a means of livelihood.

4. [See also subd. 4 below] A person belonging to the armed forces of the United States, and the active national guard and naval militia of the state.

4. [See also subd. 4 above] An active member of the army, air force, navy or marine corps of the United States, and the active national guard and naval militia of the state.

5. A member of a fire company or department or police force or department duly organized according to the laws of the state or any political subdivision thereof and performing his duties therein, or an exempt volunteer fireman, as defined in section two hundred of the general municipal law.

6. A captain, engineer, or other officer, actually employed upon a vessel making regular trips; or a licensed harbor or river pilot actually following that calling.

7. A woman.

8. An editor, editorial writer, a sub-editor, reporter or copy reader, actively and regularly employed in the handling or gathering of news for a daily, semi-weekly or weekly newspaper.

9. A person over seventy years of age. Added L.1954, c. 305, § 1; amended L.1955, c. 60, § 3; L.1955, c. 797, § 3; L.1962, c. 493, § 2; L.1965, c. 295, § 2; L.1966, c. 253, § 3, eff. April 26, 1966.

As Amended

§ 665. Exemptions

Each of the following persons only, any inconsistent provision of law to the contrary notwithstanding, although qualified, is entitled to exemption from service as a juror upon claiming exemption therefrom:

[*See main volume for text of 1 to 7*]

8. An editor, editorial writer, a sub-editor, reporter or copy reader, actively and regularly employed in the handling or gathering of news for a daily, semi-weekly or weekly newspaper and a departmental chief for news and public affairs, editorial director, news editor, news reporter and copy reader actively and regularly employed in the handling or gathering of news for radio and television stations.

9. A person over seventy years of age.

As amended L.1974, c. 226, § 3.

1974 Amendment. Subd. 8. L.1974, c. 226, § 3, eff. Sept. 1, 1974, included department chiefs, editorial directors, news editors, news reporters and copy readers for radio and television.

2. Women

Under contract providing that only teachers who are required to serve on jury would receive full salary, woman teacher who could not have been compelled to serve on jury because of this section awarding women, on request, exemption from compulsory jury service was not entitled to receive difference between teaching salary and jury compensation. Goldblatt v. Board of Ed. of City of New York, 1968, 57 Misc.2d 1089, 294 N.Y.S.2d 272.

§ 666–a. Compensation on waiver of exemption

Notwithstanding the provisions of any general, special or local law or charter provision, where a person entitled to claim an exemption from service as a juror is in the employ of any person, association, firm, corporation, partnership, political subdivision, government agency, or other public employer which by rule, ordinance or practice compensates employees who are required to perform jury service, such person, otherwise entitled to an exemption and who elects to waive that exemption and serve as a juror, shall be entitled to receive the same compensation from his employer as if he were required to serve as a juror.

Added L.1970, c. 693, eff. May 12, 1970.

§ 668. Preparation of ballots; general ballot box electronic device

The commissioners shall prepare a ballot for each person as soon as such person has qualifed for jury service. The ballots must be uniform and shall contain the name, occupation and address of the juror and may also indicate the time of year when the juror would prefer to serve and such other information as the commissioner deems necessary.

The commissioner shall place the ballot for each person qualified to serve as a juror in a box, to be known as the general ballot box, or other device used in the drawing, from which shall be drawn all trial jurors for the supreme court, the county court, the surrogate's court and the district court. The general ballot box or other device shall be retained in the office of the commissioner and shall be kept securely locked and sealed except at the time of an authorized drawing when it shall be opened under the supervision of the judge and the sheriff in charge of the drawing, and after the drawing shall be again sealed under the supervision of the judge and the sheriff. The general ballot box shall be cylindrical in form with an aperture large enough only to admit the hand of the person by whom the ballots are to be drawn. The aperture shall be provided with a cover so arranged as to be conveniently locked and sealed when closed.

If the county employs an electronic device for drawing the names of qualified trial jurors, the ballots shall be kept in locked file cabinets of the type in conventional use for punched cards or vaults or other protective housing suitable for the storage of magnetic tape, perforated paper tape and cards or microfilm.

§ 674. Additional jurors

At any time during the sitting of a court, the court may direct an additional number of trial jurors to be drawn for the term or for the part at which the order is made. The order must specify the number of jurors to be drawn and the time of drawing. If the commissioner shall have forwarded ballot boxes, or other device used in the drawing, to the inferior courts in the county, additional jurors shall be drawn from the box containing the ballots of qualified jurors residing in the locality in which the court is sitting. If the commissioner shall have forwarded lists, then ballots of the names shall be made up from the lists and additional jurors shall be drawn therefrom. The drawing shall be held in the manner provided for regular trial jurors, except that notice is not required.

The additional jurors must forthwith be notified by such a notice as the court directs, to attend the term or part at the time specified in the order. The officer notifying the jurors must forthwith file with the clerk of the court for which additional jurors were drawn a return, under his hand, naming each person notified as prescribed above and specifying in each case the manner, time and place of the service of such notice. Such return shall be presumptive evidence of the fact of such service. An affidavit of the person by whom the service shall have been made, stating the manner, time and place, shall accompany such return. No provision in this article as to intervals of time with regard to the drawing, notification and attendance of jurors shall apply to additional jurors.

As amended L.1970, c. 715, § 9, eff. May 12, 1970.

L.1970, c. 715, § 9, eff. May 12, 1970, in sentence beginning "If the commissioner shall have forwarded ballot", inserted "or other device used in the drawing."

Repealed

§ 678. Excuses and postponements

The judge of the trial court may, in his discretion, on the application of a trial juror, excuse him from a part or the whole of the time of service required of him as a juror or may postpone the time of service of a juror to a later day during the same or subsequent term of the court, or, by consent of such court, may postpone the time of service of a juror to a later date during the same or a subsequent term in any other court sitting within the county.

A person who has been notified to attend and who applies to be excused as prescribed in this section must present the notice to the judge. If he cannot personally attend he must send it by a person capable of making the necessary proof in relation to his claim to be excused or he may submit a request to be excused in writing accompanied by the necessary proof.

A note of the excuse and of the reason therefor, attested by the judge, who must append his signature or initials thereto, must be made or endorsed upon the notice to attend; or, if the person notified has not brought it into court, upon a separate sheet of paper which must be transmitted to the commissioner of jurors as a part of the report required by section six hundred eighty-two. Added L.1954, c. 305, § 1; amended L.1964, c. 419, eff. April 10, 1964.

Newly Adopted

§ 678. Excuses and postponements

The judge of the trial court or the commissioner of jurors when permitted by rule of the appropriate appellate division may, in his discretion, on the application of a trial juror, excuse him from a part or the whole of the time of service required of him as a juror or may postpone the time of service of a juror to a later day during the same or subsequent term of the court, or, by consent of such court, or such commissioner of jurors, when permitted by rule of the appropriate appellate division, may postpone the time of service of a juror to a later date during the same or a subsequent term in any other court sitting within the county.

A person who has been notified to attend and who applies to be excused as prescribed in this section must present the notice to the judge or the commissioner of jurors, when permitted by rule of the appropriate appellate division. If he cannot personally attend he must send it by a person capable of making the necessary proof in relation to his claim to be excused or he may submit a request to be excused in writing accompanied by the necessary proof.

In those cases where the judge excuses a trial juror as prescribed in this section, a note of the excuse and of the reason therefor, attested by the judge, who must append his signature or initials thereto, must be made or endorsed upon the notice to attend; or, if the person notified has not brought it into court, upon a separate sheet of paper which must be transmitted to the commissioner of jurors as a part of the report required by section six hundred eighty-two.

As amended L.1974, c. 227, § 2.

§ 678-a. Excuses and postponements in a county using a central jury system

In any county using a central jury system for the impanelling of trial jurors for civil cases by court order for the supreme, county and surrogate's courts, the court, or the commissioner of jurors with the approval of the court, may postpone or excuse a trial juror when his interests, or those of the public may be materially injured by such service, or when he is a party in any action or proceeding to be tried or determined at any term for which he may have been summoned, or where his own health or the sickness or death of a member of his family requires his absence. The commissioner of jurors shall keep a record of each juror so postponed or excused and all records of attendance in connection with the central jury system. Added L.1957, c. 342, eff. April 11, 1957.

Library References

Jury ⇐75(1-6). C.J.S. Juries §§ 201, 205.

§ 679. Discharge by the court

The court must discharge a person from serving as a trial or a grand juror in the following cases, where the causes justifying the discharge have arisen after examination for eligibility, or where the person claimed exemption at the time of examination and was refused:

1. Where it satisfactorily appears that he is not qualified.

2. Where it satisfactorily appears that he is disqualified.

3. Where it satisfactorily appears that he is exempt and he claims the benefit of the exemption.

Where a person is discharged for any of the causes specified in this section, the commissioner must destroy the ballot containing his name within sixty days after receiving notice of the juror's discharge. Added L.1954, c. 305, § 1; amended L.1958, c. 603, § 2, eff. July 1, 1958.

Library References

Jury ⇐75(1, 2). C.J.S. Juries §§ 201, 205.

§ 680. Trial jurors drawn for court to serve in other parts, terms or courts

A trial juror drawn for service in any court must serve as a trial juror in any other term or part of the same court when it sits in terms or parts, or, by consent of such court, in any other court sitting at the same time within the county. When so serving in such other term, part or court, his service shall be with the same power, force and effect as if he had been drawn as a trial juror for service in such other term, part or court. Added L.1954, c. 305, § 1; amended L.1962, c. 91, eff. March 6, 1962.

Historical Note

L.1962, c. 91, eff. March 6, 1962. substituted "within the county" for "in the same courthouse".

Former section 680. Repealed L. 1940, c. 202, § 2. Section related to the enumeration of sections of former Article 16 applicable to Kings County, and derived from Code Civ. Proc, §§ 1034, 1062, 1078.

Former sections 680-a to 680-d. Repealed L.1940, c. 202, § 2. Sections added L.1938, c. 552, § 14, related to the commissioner of jurors in Kings County, and derived from L.1902, c. 564, §§ 1, 2, 4-6.

Library References

Jury ⇐66(7). C.J.S. Juries § 168.

§ 681. Court clerk's certificate after conclusion of service of trial jurors

The clerk of every court for which trial jurors have been drawn, or if there is no clerk, the judge thereof, shall immediately after the close of each term or after the discharge of the jurors if they are discharged before the close of the term, or after the conclusion of a jury trial, prepare a certificate in duplicate specifying distinctly and in detail, as follows:

(1) The name and residence of each juror who attended or served; the number of days the juror attended for the purpose of serving; the number of days he actually served; and the amount paid or to be paid to him for attendance, as the case may be.

(2) The name and residence of each juror who was excused, discharged, exempted or declared disqualified by a judge of the court, together with any affidavit, certificate or any other document or paper submitted by the juror at the time he was excused, discharged, exempted or declared disqualified.

(3) The name and residence of each person notified who did not attend or serve.

(4) The name and residence of each such person adjudged guilty of contempt of court, and the penalty, if any. Added L. 1954, c. 305, § 1, eff. July 1, 1955.

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

THE PEOPLE OF THE UNITED STATES, ex rel.,

ALLEN M. ANDERSON,

Petitioner,

-against-

J. LELAND CASSCLES, Superintendent of Great Meadow Correctional Facility,

Respondent.

AFFIDAVIT OF SERVICE BY MAIL

STATE OF NEW YORK:
: ss.:
COUNTY OF ALBANY :

PATRICIA A. RUTNIK, being duly sworn deposes and says that she is over the age of 18 years; that she served the within Brief Appendix and Motion for Extension of Time to File Brief upon the following attorney on October 17, 1975 upon Louis J. Lefkowitz, Attorney General; Rona Bayer, of counsel, 2 World Trade Center, New York, New York by depositing a true and correct copy of the same properly enclosed in a post-paid wrapper in the Office Depository maintained and exclusively controlled by the United States at the Academy Branch on New Scotland Avenue, Albany New York 12208; directed to said Attorney respectively, at said address, respectively mentioned above, that being the address within the state designated for that purpose upon the last papers served in this action or the place where the above then resided or kept offices, according to the best information which can be conveniently obtained.

Patricia A. Rutnik
PATRICIA A. RUTNIK

Sworn to before me this
17th day of October, 1975

Lanny Earl Walter

LANNY EARL WALTER
Notary Public in the State of New York
Qualified in Albany County
Commission Expires March 30, 1977
Notary Reg. No. 4547310

State of New York

COURT OF APPEALS Court, County of

Index No.

Year 1975

THE PEOPLE OF THE UNITED STATES, ex rel.,

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-against-

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Respondent.

AFFIDAVIT OF SERVICE

LEGAL ASSISTANCE PROJECT
LANNY EARL WALTER, Of Counsel
JOHN A. WILLIAMSON, Of Counsel

Office and Post Office Address
ALBANY LAW SCHOOL
80 NEW SCOTLAND AVENUE
ALBANY, NEW YORK 12208
(518) 465-1545

Due and timely service of a copy of the within is hereby admitted.
Dated,
Attorney(s) for .....

(NOTICE OF ENTRY)
Sir:—Please take notice that the within is a true copy of a

duly entered in the office of the clerk of the within named court on , 19

(NOTICE OF SETTLEMENT)
Sir:—Please take notice that an order of which the within is a true copy will be presented for settlement to the Hon. one of the judges of the within named Court, at
on the day of 19 at M.
Dated,

Yours, etc.

LEGAL ASSISTANCE PROJECT
LANNY EARL WALTER, Of Counsel
JOHN A. WILLIAMSON, Of Counsel

Office and Post Office Address
ALBANY LAW SCHOOL
80 NEW SCOTLAND AVENUE
ALBANY, NEW YORK 12208
(518) 465-1545

To

Attorney(s) for

Published by NATIONAL LEGAL SUPPLY, INC., Albany, N.Y. 12207 (Rev. 3-74)

Court Backer (Revised 3-74)

STATE OF NEW YORK, COUNTY OF *SS.:*

AFFIDAVIT OF SERVICE BY MAIL

, being duly sworn, deposes and says: that he is over the age of 18 years; that he served the within upon the following attorney(s) at the following time(s) and place(s) in the following manner: 19

by depositing a true and correct copy of the same properly enclosed in a post-paid wrapper in the Official Depository maintained and exclusively controlled by the United States at , directed to said Attorney(s), respectively, at said address(es), respectively mentioned above, that being the address(es) within the state designated for that purpose upon the last papers served in this action or the place where the above then resided or kept offices, according to the best information which can be conveniently obtained.

Sworn to before me, this day of 19

(PRINT NAME BELOW SIGNATURE)

Notary Public—Commissioner of Deeds

STATE OF NEW YORK, COUNTY OF *SS.:*

VERIFICATION

INDIVIDUAL

, being duly sworn, deposes and says that deponent is in the within action; that deponent has read the foregoing and knows the contents thereof; that the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters deponent believes it to be true.

CORPORATION

, being duly sworn, deposes and says that deponent is the of the corporation named in the within action; that deponent has read the foregoing and knows the contents thereof; and that the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters deponent believes it to be true.

The grounds of deponent's belief as to all matters not stated upon deponent's knowledge are as follows:

Sworn to before me, this day of 19

(PRINT NAME BELOW SIGNATURE)

Notary Public—Commissioner of Deeds

STATE OF NEW YORK, COUNTY OF *SS.:*

ATTORNEY'S AFFIRMATION or CERTIFICATION

The undersigned, an attorney admitted to practice in the courts of New York State,

☐ Certification By Attorney certifies that the within copy has been compared by the undersigned, with the original filed and found to be a true and complete copy thereof (pursuant to Sec. 2105 CPLR).

☐ Attorney's Affirmation shows: deponent is the attorney(s) of record for in the within action; deponent has read the foregoing and knows the contents thereof; the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters deponent believes it to be true. This verification is made by deponent and not by

The grounds of deponent's belief as to all matters not stated upon deponent's knowledge are as follows:

The undersigned affirms that the foregoing statements are true, under the penalties of perjury.
Dated:

(PRINT NAME BELOW SIGNATURE)

§ 686. Right of juror to be absent from employment

Any person who is summoned to serve as a juror under the provisions of this chapter and who notifies his employer to that effect prior to the commencement of his term of service, shall not on account of his absence from employment by reason of such jury service be subject to discharge or penalty, except as hereinafter provided. An employer may, however, withhold wages of any such employee serving as a juror, during the period of such jury service. The subjection of an employee to discharge or penalty on account of his absence from employment by reason of jury service shall constitute a criminal contempt of court punishable pursuant to section seven hundred fifty of this chapter. Added L.1961, c. 501; amended L.1966, c. 102, § 2, eff. Jan. 1, 1967.

Title 22A, NY Codes, Rules and Regulations:

820.4 [Ascertainment of persons eligible to serve; sources of information.] In ascertaining the names of persons eligible to serve as trial jurors all sources of information set forth in section 658 of the Judiciary Law should be used.